WP(C) 5596/2002
BEFORE
HON'BLE MR. JUSTICE HRISHIKESH ROY
Heard Mr. B. Chakraborty, learned counsel appearing for the petitioner. None app ears for the respondents.

2. The petitioner who was compulsorily retired from service after a Discipl inary Proceeding, while serving as a Sub-Divisional Judicial Magistrate, has app roached this Court to challenge the decision dated 7.3.2002 of the Enrolment Com mittee of the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizor am & Arunachal Pradesh, whereby his application for resumption of practice was r ejected. The decision of the Enrolment Committee is based on the provisions of S ection 24-A of the Advocates' Act, 1961 and Rule 7-A of the Bar Council of India Rules.

3. It is contended by the petitioner that application of Section 24-A to re ject his application for resumption of practice is unjustified in as much as, th e petitioner has been compulsorily retired and not dismissed or removed from emp loyment. It is submitted by Mr. Chakraborty that assuming that compulsory retire ment is a disqualification under Rule 24-A, such disqualification shall cease to have effect after a period of 2 years from the date of removal and as such peti tioner's application for resumption of practice should now be reconsidered by th e Enrolment Committee.

4. Referring to the Chapter (iii) provisions enacted under the Bar Counsel of India Rules, the learned counsel submits that Rule 5(2) is applicable to a pe rson who wants to resume practice and such application is required to be conside red by reference to the disqualification prescribed under Section 24-A of the Ad vocates' Act and provisions of Rule 7-A is not attracted to a consideration for resumption of practice

5. It is further contended by Mr. Chakraborty that when Section 24-A permit s consideration of application for resumption of practice 2 years after the date of removal, the provisions of permanent debarment envisaged by Rule 7-A of the Bar Council of India Rules can have no bearing in the consideration to be made b y the Enrolment Committee.

6. Although none has appeared on behalf of the respondent Bar Council, a co unter affidavit has been filed on their behalf. It is averred therein that the r ejection of the petitioner's application is ordered by applying the spirit of Ru le 7-A of the Bar Council of India Rules and there is no distinction in the appl icable criterion for a fresh enrolment and a case, where resumption of practice is sought by an applicant.

7. The papers pertaining to disciplinary proceeding leading to the order of compulsory retirement of the petitioner has been produced by the petitioner's c ounsel for perusal of the Court. The substance of the charge against the petitio ner is that while serving as the SDJM (S), Dibrugarh on 14.11.1997, on an applic ation submitted by the prosecuting inspector for Auction Sale of articles seized in connection with G.R. Case No. 277/97, the petitioner had passed order permit ting Auction Sale of the seized articles, although the seized goods were not per ishable in nature. The petitioner has been found guilty of the charge that he pe rmitted the sale without obtaining permission of the Chief Judicial Magistrate. The petitioner was charged with failing maintain devotion to duty and conduct un becoming of a Judicial Officer. But no charge of securing any illegal gratificat ion has been levelled against the delinquent.

8. In the context of the above charge on the basis of which the penalty of compulsory retirement from service has been ordered, it cannot be said that the petitioner has been removed from service, on a charge involving moral turpitude

or corruption. Therefore, rejection of his application by applying the provisions of Section 24-A and the spirit of Rule 7-A of the Bar Council of India Rules does not appear to the Court to be justified.

9. Even otherwise the disqualification incurred by an applicant under Section 24-A ceases to have effect after 2 years and under such circumstances, the disqualification can entail only temporary rejection of claim for re-enrolment.

10. That apart Rule 5(2) under Chapter (iii) of the Bar Council of India Rules prescribes the criterion under which an application for resumption of practice has to be considered and only the disqualification under Section 24-A of the Advocates' Act are referred to in Rule 5(2) of the Rules. In my view Rule 7-A may not have any application for considering an application for resumption of practice as the said Rule applies to an application for enrolment and not to an application for resumption of practice

11. In the above circumstances, I am of the considered opinion that the impugned decision rejecting the petitioner's application for resumption of practice, cannot be sustained and the same is accordingly quashed. Considering that 2 years have passed by since the compulsory retirement of the petitioner, I am of the view that the petitioner's prayer for resumption of practice deserves a fresh consideration by the Enrolment Committee of the respondent Bar Council.

12. Accordingly this petition is allowed by permitting the petitioner to apply for fresh reconsideration and if such an application is made, the respondents are directed to consider his prayer for enabling him to resume practice, having regard to the provisions of Section 24-A of the Advocates' Act.

13. The writ petition is disposed of in the above terms.